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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Jack Daniel, Individually and on Behalf of  
All Others Similarly Situated,

Plaintiff,

v.

Pacific NW, LLC,

Defendant.

No. 2:21-cv-02187-MTL

**JOINT MOTION FOR APPROVAL  
OF SETTLEMENT**

**JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT  
AND FOR DISMISSAL OF THE COMPLAINT WITH PREJUDICE**

Plaintiffs Jack Daniel (“Mr. Daniel”), James Morgan (“Mr. Morgan”), Miguel  
Garcia (“Mr. Garcia”), Jacinto Mata (“Mr. Mata”), Dawson James (“Mr. James”) and James

1 Dionne (“Mr. Dionne”) (collectively, “Plaintiffs”) and Defendant Pacific NW, LLC  
2 (“Defendant”), by and through respective counsel, jointly move the Court for approval of  
3 the settlement agreement that resolves the claims in the Complaint alleging violation of the  
4 Fair Labor Standards Act (“FLSA”) and upon such approval, for the dismissal of the  
5 Complaint with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2).  
6

7 As grounds for the motion, the parties joint state the following:  
8

9 1. This is an action filed under the Fair Labor Standards Act (“FLSA”), 29  
10 U.S.C. § § 201, et seq., in which Mr. Daniel seeks recovery for overtime wages allegedly  
11 due to him as a result of being paid on a “piece rate” basis. The case was certified as a  
12 collective action and five other Plaintiffs opted into the case. Defendant denied Plaintiffs’  
13 allegations and disputes their entitlement to damages.  
14

15 2. In particular, Defendant asserts that Plaintiffs’ claims regarding the hours  
16 allegedly worked by each of them is the subject of a good faith dispute. Defendant contends  
17 that several contested issues of fact and law would need to be litigated and resolved in this  
18 matter relating to damages.  
19

20 3. The Parties have executed an Agreement wherein they have agreed to the  
21 dismissal of this action with prejudice. A copy of the Agreement is attached hereto as  
22 Exhibit A.  
23

24 4. Unlike most private settlements negotiated between parties in a civil action  
25 for damages, in a FLSA case, the parties must “seek the district court's approval of the  
26 settlement's terms to ensure that it is enforceable and fair.” *Juvera v. Salcido*, 2013 WL  
27 6628039, at \*3 (D. Ariz. 2013) (citations omitted). In deciding whether to approve the  
28

1 parties' settlement, courts in the Ninth Circuit follow *Lynn's Food Stores, Inc. Villarreal v.*  
2 *Caremark LLC*, 2016 WL 5938705, at \*2 (D. Ariz. May 10, 2016); *Lopez v. Arizona Pub.*  
3 *Serv. Co.*, 2010 WL 1403873, at \*1 (D. Ariz. Jan. 27, 2010). In *Lynn's Food Stores, Inc.*,  
4 the Eleventh Circuit held that court approval is required for settlements of claims brought  
5 under the FLSA pursuant to 29 U.S.C. § 216(b). *Lynn's Food Stores, Inc. v. United States*  
6 *Department of Labor*, 679 F.2d 1350, 1354-55 (11th Cir. 1982). At the conclusion of the  
7 mediation held by the Honorable John Z. Boyle, the parties were instructed to follow the  
8 traditional process of seeking court approval of the settlement. Counsel for the Parties are  
9 aware of the recent decision from this District in *Evans v. Centurion Managed Care of*  
10 *Arizona LLC*, CV-23-00282-PHX-DWL in which the Honorable Dominic W. Lanza ruled  
11 that such approval is not required by the FLSA. This motion is filed to comply with the  
12 order from Magistrate Boyle while also acknowledging the ruling in *Evans*.

13  
14  
15  
16 5. To be approved, an FLSA settlement agreement must constitute a "fair and  
17 reasonable resolution of a *bona fide* dispute." *Quintana v. HealthPlanOne LLC*, No. CV-  
18 18-02169-PHX-RM, 2019 WL 3342339, at \*1–2 (D. Ariz. July 25, 2019); *Quiroz v. City of*  
19 *Ceres*, No. 1:17-CV-00444-DAD-BAM, 2019 WL 1005071, at \*2 (E.D. Cal. Mar. 1, 2019)  
20 (citing *Dunn v. Teacher's Ins. & Annuity Ass'n of Am.*, No. 13-CV-05456-HSG, 2016 WL  
21 153266, at \*3 (N.D. Cal. Jan. 13, 2016)); *see also Lynn's*, 679 F.2d at 1352–53. To find a  
22 bona fide dispute, "[t]here must be 'some doubt . . . that the plaintiffs would succeed on the  
23 merits through litigation of their [FLSA] claims.'" *Quintana*, 2019 WL 1005071, at \*1  
24 (quoting *Selk v. Pioneers Mem. Healthcare Dist.*, 159 F. Supp. 3d 1164, 1172 (S.D. Cal.  
25 2016)).  
26  
27  
28

1           6.     The Parties have established the existence of a *bona fide* dispute; namely,  
2     Plaintiffs alleged that Defendant violated the FLSA because it failed to pay them overtime  
3     compensation due to them as non-exempt employees. Plaintiffs understand that success in  
4     litigation is not a certainty and legitimate disputes existed as to the hours worked by the  
5     Plaintiffs. Accordingly, there was a *bona fide* dispute between the Parties that is fully  
6     resolved by the proposed Agreement. Moreover, approval of the Agreement will promote  
7     the policy of encouraging settlement of litigation. *See Selk*, 159 F. Supp. 3d at 1175.  
8

9  
10           7.     The settlement provides for meaningful compensation that is well within the  
11     possible range of recovery. The Parties undertook written discovery, including document  
12     production, to meaningfully determine the strength of the Plaintiffs' claim for unpaid  
13     overtime wages and applicable settlement values, and there has been no fraud or collusion  
14     between the Parties. The Honorable John Z. Boyle conducted a mediation with the Parties  
15     which led to this settlement. The Parties have carefully negotiated in good faith to resolve  
16     Plaintiffs' claims in order to achieve a fair and reasonable compromise of the disputed  
17     issues of law and fact in order to fully and finally resolve their claims against Defendant.  
18

19  
20           8.     Although denying any liability, solely for the purpose of resolving the matter,  
21     Defendant has agreed to pay a total of \$40,000.00 (less applicable taxes and withholdings)  
22     for the disputed overtime at issue and Plaintiffs' attorney fees and costs.  
23

24           9.     Under the terms of the Agreement, each Plaintiff is receiving an amount in  
25     excess of their alleged unpaid wages as calculated by Plaintiffs' counsel.

26           10.    Further as part of the settlement, Defendant agreed to pay Plaintiffs' attorneys  
27     fees in the amount of \$18,450.00. Such fees were negotiated by the parties at arm's length  
28

1 and therefore carry a presumption of reasonableness. *See In re First Capital Holdings Corp.*  
2 *Financial Products Securities Litigation*, MDL No. 901, 1992 WL 226321, at \*4 (C.D. Cal.  
3 June 10, 1992).

4  
5 11. To the extent the Court wishes to determine the reasonableness of the fees  
6 and costs agreed, Plaintiffs' counsel avers that they are reasonable. Plaintiffs' counsel has  
7 incurred 146.4 hours billed to this matter, at a blended rate of \$219.23, taking this case from  
8 initial fact investigation to Complaint drafting through discovery and damages calculations,  
9 to settlement negotiations and finalization. In addition, Plaintiffs' counsel has incurred case  
10 costs of \$1,140.20. At approximately just 55% of the fees and costs accrued, the fee amount  
11 is reasonable.  
12

13 12. Both Plaintiff and Defendant, through their respective counsel, represent to  
14 the Court that the Agreement is fair, equitable and in compliance with the policies of the  
15 FLSA.  
16

17 13. All parties were represented by competent counsel with experience in this  
18 area of the law.  
19

20 Accordingly, the parties jointly request that the Court review the Agreement and  
21 enter an Order approving the Agreement and dismissing this matter with prejudice, with  
22 each party to bear his own fees and costs, except as otherwise expressly provided in the  
23 Agreement.  
24

25 DATED September 19, 2023,

26 s/ Sean Short  
27 Attorney for Plaintiffs  
28

s/ Michael Curran  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I do hereby certify that, on this 19<sup>th</sup> day of September, 2023, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants, and by email and/or U.S. First Class Mail if non-registrants:

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Attorney for Plaintiff

/s/ Michael Curran  
Michael Curran